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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

MICHAEL EDENBOROUGH and PATRICIA WILSON, individually and on behalf of all others similarly situated, Plaintiffs, vs. ADT, LLC d/b/a ADT SECURITY SERVICES, INC. a Florida limited liability company, and THE ADT CORPORATION, a Delaware corporation, Defendants.	Case No: 16-2233 JST **CLASS ACTION** **PLAINTIFFS' NOTICE OF MOTION, UNOPPOSED MOTION, AND MEMORANDUM IN SUPPORT OF PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** Judge: Hon. Jon S. Tigar Ctrm: 9 – 19th Floor Date: April 27, 2017 Time: __2:00 p.m.

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NOTICE

TO ALL PARTIES AND COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on April 27, 2017, at 2:00 p.m., or as soon thereafter that the matter may be heard, in Courtroom 9 of the U.S. District Court for the Northern District of California, located at 450 Golden Gate Avenue, San Francisco, CA, Plaintiffs and other proposed Class Representatives ("Plaintiffs") will and they hereby do move the Court for an order granting preliminary approval of a national class action settlement, provisionally certifying the Settlement Class, appointing Lead Class Counsel, Class Counsel, and Class Representatives, directing notice to the Settlement Class, and scheduling a formal fairness hearing.

This motion is filed contemporaneously with the motion of Plaintiff Michael Edenborough asking the Court to grant him leave to file a Second Amended Complaint adding Patricia Wilson as an additional class representative and seeking relief on behalf of a national class. Both motions are unopposed.

RELIEF REQUESTED

As discussed below, the Parties have entered into a Settlement Agreement ("Settlement") resolving five separate actions pending in federal and state courts on behalf of a nationwide Settlement Class that provides substantial monetary compensation to the putative class members and includes a robust notice plan. Plaintiffs respectfully request that the Court now enter an order:

(1) Granting preliminary approval to the Settlement;

(2) Certifying the Settlement Class for settlement purposes only;

(3) Appointing Dahl Administration as the Settlement Administrator;

(4) Approving the Notice Program and the form and content of the Notices exhibited to the Settlement;

(5) Approving as to form and content the Claim Form exhibited to the Settlement;

(6) Appointing Michael Edenborough and Patricia Wilson as Class Representatives;

(7) Appointing Thomas A. Zimmerman, Jr. of Zimmerman Law Offices, P.C., as Lead Class Counsel and Francis J. Balint, Jr. of Bonnett, Fairbourn, Friedman & Balint, P.C., Mark A. Chavez of Chavez & Gertler LLP, Jonathan M. Stein of Saxena White

P.A., and William C. Wright of The Law Offices of William C. Wright, P.A., as Class Counsel; and

(8) Scheduling a Final Fairness Hearing to consider entry of a final order approving the Settlement and the request for Attorneys' Fees and Expenses and Class Representative Service Awards.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

After litigation of five separate actions in federal and state courts, extensive formal and informal discovery, and months of negotiations, including two days of mediation overseen by highly-respected, retired Magistrate Judge and JAMS mediator Edward A. Infante, the Plaintiffs and putative class representatives in each of the actions – Michael Edenborough, Patricia Wilson, Janet Cheatham, Dale Baker, and Santiago Hernandez – and Defendants ADT Corporation and ADT, LLC d/b/a ADT Security Services (collectively, "ADT" or "Defendants"), entered into a Settlement Agreement (the "Settlement" or "SA"), a copy of which is attached to the Declaration of proposed Lead Counsel Thomas A. Zimmerman, Jr. ("Zimmerman Decl.") as Exhibit 1.[1]

Under the Settlement, ADT agrees to pay sixteen million dollars ($16,000,000) for the benefit of Settlement Class Members ("Settlement Amount"). After deducting from the Settlement Amount the costs for class notice and settlement administration, and Court-approved Attorneys' Fees and Expenses and Class Representative Service Awards, the Net Settlement Amount will be allocated to Settlement Class Members who submit valid Claim Forms. The distribution of the Net Settlement Amount will be in accordance with a Plan of Allocation that provides for a monetary payment projected to be $45 and $15 depending on the Settlement Class Member's date of execution of his/her first ADT contract, subject to *pro rata* adjustment so that every valid claim gets paid and all money is expended. No Settlement Funds will revert to ADT.

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[1] The definitions used in the Settlement are adopted and used herein. The Settlement also contemplates that Stephanie Hallam Dillard will be added as a Plaintiff in the Illinois (*Baker*) Action. On March 23, 2017, the Court in the Illinois Action granted leave to amend, and a Third Amended Complaint was filed on that day adding Ms. Dillard as a Plaintiff in the Illinois Action.

II. NATURE OF THE LITIGATION AND PROCEDURAL HISTORY

Each of the settled cases (the "Actions") share common factual allegations regarding ADT's alleged failure to disclose to residential customers the alleged vulnerability of its residential security systems to evasion and jamming of the system's wireless peripheral sensors by various electronic devices, and alleged misrepresentations regarding same. Plaintiffs allege that, unbeknownst to ADT customers when entering into their residential monitoring contracts during the Class Period, their systems' wireless peripheral sensors could be disabled with inexpensive equipment. Plaintiffs allege that ADT's concealment of the security flaws was threatened in July 2014 when Logan Lamb, an employee at the Oak Ridge National Laboratories, planned to reveal publicly his findings about how ADT's wireless sensors could be disabled.

On November 9, 2014, *Baker v. ADT* (the "Illinois Action") was filed by an Illinois resident, on behalf of putative nationwide and Illinois state classes. *Cheatham v. ADT* (the "Arizona Action") was filed by an Arizona resident in September 2015 on behalf of a putative class of Arizona residents, and *Edenborough v ADT* (the "California Action") was filed by a California resident in March 2016 on behalf of a putative class of California residents. Two related cases have also been filed by Florida residents in Florida state court, *Wilson v. ADT* and *Hernandez v. ADT*, both on behalf of putative classes of Florida residents (the "Florida Actions").

After the Actions were filed, beginning in August 2016, ADT inserted express disclosure language into its standardized contracts, on its web site, and in SEC filings.

Plaintiffs' statutory consumer fraud claims in the Arizona, California, and Illinois Actions have survived ADT's motions to dismiss. ADT's motions to dismiss in the Florida Actions were briefed, argued and awaiting ruling when the Actions were settled. As detailed in the Zimmerman Declaration, the parties initially agreed that the Settlement would be presented for approval to the District Court in Illinois, where a national class claim was asserted. Each of the other Actions were subsequently stayed in their respective courts pending completion of the class settlement approval process. However, due to a subsequent change in direction of the sole named Illinois class representative, Dale Baker, the parties revised the Settlement to provide that, with approval of this Court, the complaint herein would be amended to add a national class, and the Settlement would be presented for approval to this Court. Plaintiffs' Counsel believe that is the most effective way to protect Mr. Baker's individual rights vis à vis ADT, and achieve the substantial benefits of the hard-won Settlement for the other members of the proposed Settlement Class.

Each of the Actions has been vigorously litigated by Plaintiffs and ADT. ADT has produced and Plaintiffs' counsel have reviewed over 45,000 pages of documents; most of the Class Representatives and seventeen (17) fact witnesses have been deposed; and detailed, preliminary expert declarations regarding liability and methodology for calculation of damages have been exchanged. Plaintiffs in *Baker*, *Cheatham* and *Edenborough* have filed motions for class certification, and ADT has filed an opposition memorandum in *Cheatham* and *Edenborough*.[2] (The motions are stayed.)

Over a period of several months, the parties had discussions and engaged in arm's-length negotiations in an effort to resolve the Actions. The negotiations included two mediation sessions months apart that were overseen by highly-respected, retired Magistrate Judge and JAMS mediator, Edward A. Infante. (Zimmerman Decl. ¶ 20.) The mediation resulted in the Settlement.

Proposed Lead Class Counsel and Class Counsel (together, "Class Counsel") conducted a thorough examination and investigation of the facts and law relating to the matters in the Actions. They also evaluated the merits of all Parties' contentions and the impact of the Settlement on all Parties, especially the Settlement Class Members. Class Representatives and Class Counsel have considered the terms of the Settlement, the numerous risks of continued litigation, and other factors, including: (1) the expense and length of time necessary to prosecute the Actions through trial; (2) the uncertainty of outcome at trial and the possibility of an appeal by either side; (3) the possibility that a contested class might not be certified, and/or that certification would be reversed on appeal; (4) the risk that ADT could file a motion for summary judgment that, if granted, could dispose of all or many of the claims in the Actions; and (5) the benefits being made available to Class Representatives and the Settlement Class Members under the terms of this Agreement.

Weighing the above factors, the moving Plaintiffs and their counsel believe that the terms

[2] The *Baker* action was stayed based on the settlement after the motion for class certification was filed but before ADT's response was due.

and conditions of the Settlement are fair, reasonable, adequate, and in the best interests of the Plaintiffs, Class Representatives, and the other Settlement Class Members.

III. SUMMARY OF SETTLEMENT TERMS

A. The Settlement Class

The Parties have agreed to certification of the following Settlement Class, subject to typical exclusions:

> All current and former ADT customers who between November 13, 2009 and August 15, 2016 entered into a contract with ADT or an ADT dealer for installation of a residential security system, or who had ADT or an ADT dealer install a residential security system, that includes at least one wireless peripheral sensor.

SA II, p. 7. Settlement Class Members who exclude themselves or "opt-out" of the Settlement, pursuant to the procedures set forth in SA XI (pp. 16-17) will not thereafter be Settlement Class Members, will not be bound by the Settlement, and will not be eligible to make a claim for any benefit provided by the Settlement.

B. Settlement Benefits

The Settlement provides significant monetary relief to each Settlement Class Member who submits a valid claim form. ADT will pay $16,000,000 in exchange for a release which explicitly *excludes* property damage and personal injury claims. (SA II, p. 7, and IV.A, p. 8). ADT will pay the Settlement Amount in two payments. ADT's first payment of $1.5 million will occur within 7 days after entry of the Preliminary Approval Order, and the second payment of $14.5 million will occur within 7 days of the Effective Date of the Settlement. (SA V.B, p.10, VI.B, p. 10). The Settlement Amount will be used to pay costs for a robust Class Notice Program, explained below, and settlement administration, including the processing of Claim Forms and the mailing of settlement checks. (*Id.*; *see also* SA VII (Class Notice), pp. 10-12, VIII (Allocation), pp. 13-15.)

1. Monetary Benefits to Settlement Class Members

After deductions for class notice and settlement administration and Court-approved Attorneys' Fees and Expenses and Class Representative Service Awards, the Net Settlement Amount will be allocated to Settlement Class Members who submit valid Claim Forms. (SA VIII, pp. 12-15). The Net Settlement Amount will be exhausted to pay Settlement Class Members'

Claims, so that no money reverts to ADT. (SA VIII.B.4, p. 14).

The Plan of Allocation takes into consideration the strength of Plaintiffs' ability to prove ADT's liability during two different time periods, November 13, 2009 through July 23, 2014, and July 24, 2014 through August 15, 2016, as ADT's knowledge regarding the alleged security flaws was different in those two periods. (Zimmerman Decl. ¶ 24.) Settlement Class Members who executed their first contract with ADT or an ADT dealer for installation of a residential security system with a wireless peripheral sensor during the first period did so before ADT learned of Logan Lamb's presentation and the alleged vulnerabilities of the residential wireless alarm systems he identified. These Settlement Class Members will be entitled to a settlement payment of $15, subject to any *pro-rata* adjustment up or down as necessary so that every valid claim gets paid and the settlement funds are exhausted. (SA VIII.B.1, p.13, VIII.B.4, p. 14).

Settlement Class Members who executed their first residential security contract with ADT or an ADT dealer during the second period have a stronger case for proving ADT's liability given that ADT admits it learned in July 2014 of Logan Lamb's planned presentation and his allegations of security flaws in ADT's wireless residential alarm systems, and Plaintiffs allege that despite its undeniable awareness of these vulnerabilities, ADT failed to adequately disclose them. The ending date of August 15, 2016 was chosen because, by that time, ADT had changed its disclosures on its website, in its contracts, and in SEC filings, to specifically disclose the risk of hacking of the wireless communications with the peripheral sensors. Given this backdrop, the Settlement Class Members in the second category have the stronger case for proving ADT's concealment of alleged security flaws. Thus, those Settlement Class Members will be entitled to a settlement payment of $45, subject to the same *pro-rata* adjustment up or down. (SA VIII.B.2, p. 13, VIII.B.4, p. 14). Based on projected claims rates, Class Counsel expects no downward adjustment of the payout amounts.[3] (Zimmerman Decl. ¶ 25.)

The claims process has been designed to make it easy for Settlement Class Members to make claims. The Claim Form (SA Exh. C) enables current and former ADT customers to identify themselves as Settlement Class Members by checking a box indicating that their residential alarm system had at least one wireless peripheral sensor. The customer can then check a box to indicate in which time period they first signed their contract or had their residential security system installed. *Id.* The Postcard Notice (Exh. B-5) will have a tear-off Claim Form that a Settlement Class Member can fill out and mail to the Settlement Administrator. Additionally, a fillable Claim Form that can be submitted electronically will be available on the Settlement Website. (SA VII.E, p. 12). Settlement Class Members do not have to submit any documentation with their Claim Form.

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[3] For example, if notice and administration costs are $1.6 million and 6% of all *potential* ADT customers make a valid claim, no downward adjustment of the payout amounts would be necessary. These are very conservative estimates, as class notice will be provided to millions of *potential* Settlement Class Members, many of whom are not actually in the Settlement Class.

2. Class Notice

As explained in detail in Part IV-C-2 below, direct notice will be given by U.S. mail to all current and former ADT customers who are in the "Probable" Settlement Class Member category. In addition, notice will be given to "Possible" Settlement Class members (and *also* to those in the "Probable" category) through email (where available), publication, a Settlement Website, posting of the Summary Notice on ADT's corporate website with a link to the Settlement Website, and a Tweet from ADT's Twitter Account. (SA VII, pp. 11-12). The costs of Notice and Claims Administration will be paid from the Settlement Amount. (SA VIII.C, pp. 14-15).

3. Release

Plaintiffs and Settlement Class Members agree to release all claims predicated upon the facts alleged in the Actions. (SA IV.A, p. 8). However, the definition of Released Claims expressly *excludes* any claims for personal injuries or for damage to or loss of property. *Id.*

4. Attorneys' Fees, Expenses, and Service Awards

Plaintiffs will seek an award of reasonable attorneys' fees and costs in an amount approved by the Court, which will be paid from the Settlement Amount. (SA IX, p.15). Plaintiffs' motion will request up to one-third of the Settlement Amount plus the costs and expenses that Class Counsel have incurred in the prosecution of the Actions. *Id.* Plaintiffs will file their motion at least 14 days prior to the deadline for submission of Requests for Exclusion and Objections. *Id.* The motion papers will be made available on the Settlement Website for Settlement Class Members to access and review prior to the deadline for Requests for Exclusion and Objections.

Class Counsel also intend to seek Service Awards for each of the Plaintiffs in consideration for their having undertaken the Actions, assisting in their prosecution, and otherwise serving as Class Representatives, in varying amounts up to a maximum of $10,000, which will be justified at the fairness hearing. (SA X, pp. 15-16). Said application will also be filed at least 14 days prior to the deadline for submission of Requests for Exclusion and Objections. *Id.* Such service awards are commonly granted. *See, e.g., Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009) ("Incentive awards are fairly typical in class action cases."); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (approving incentive award of $25,000). Plaintiffs' support for the Settlement Agreement as fair and reasonable is *not* conditioned upon the Court's award of the requested Service Awards. (SA X, p. 16).

IV. ARGUMENT

A. Preliminary Approval of the Settlement is Appropriate

There exists a "strong judicial policy that favors settlements, particularly where complex class action litigation is concerned." *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008) (citing *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992)). Settlements are particularly favored "in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation." *In re NVIDIA Corp. Derivative Litig.*, No. C-06-06110-SBA(JCS), 2008 WL 5382544, at *2 (N.D. Cal. Dec. 22, 2008).

Courts employ a two-step process to review proposed class action settlements. First, there is preliminary approval and notice to the class, and then final approval. Manual for Complex Litigation, Fourth, § 21.632. The preliminary approval stage requires that the Court "make a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms." *Id.*; *see also* Fed. R. Civ. P. 23(e). Preliminary approval should be granted where the settlement falls "within the range of possible approval." *In re Tableware Antitrust Litig.*, 484 F.Supp.2d 1078, 1080 (N.D. Cal. 2007). A Court should consider whether "the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval." *Lilly v. Jamba Juice Co.*, No. 13-CV-02998-JST, 2015 WL

1248027, at *7 (N.D. Cal. Mar. 18, 2015). "The proposed settlement need not be ideal, but it must be fair and free of collusion, consistent with a plaintiff's fiduciary obligations to the class." *Id.* (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998)).

An analysis of the factors considered for final approval demonstrates that the Settlement is appropriate for preliminary approval and the dissemination of Notice to the Settlement Class. At the final approval stage, a court "must balance a number of factors: the strength of the plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed and the state of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement." *Id.* (citing *Hanlon*, 150 F.3d at 1026) (citations omitted). "In some cases, one factor alone may prove determinative in finding sufficient grounds for court approval." *Curtis-Bauer v. Morgan Stanley & Co.*, No. C 06-3903 TEH, 2008 WL 4667090, at *3 (N.D. Cal. Oct. 22, 2008) (citing *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir.1993)). Analysis of these factors demonstrates that the Settlement is well within the required range of possible approval.

1. The Settlement is the Product of Informed and Non-Collusive Negotiations

"[C]ourts respect the integrity of counsel and presume the absence of fraud or collusion in negotiating the settlement, unless evidence to the contrary is offered." H. Newberg, A. Conte, Newberg on Class Actions §11.51 (4th ed. 2002). There is an initial presumption of fairness when a proposed class settlement is the product of arm's-length negotiations, sufficient investigation has been taken to allow the parties and the court to make an informed decision, and counsel involved are competent and experienced. *Id.*, §11.41; *see, e.g., In re First Capital Holdings Corp. Financial Products Securities Litig.*, MDL No. 901 at *2 (C.D. Cal. June 10, 1992).

Class Counsel are well-respected and highly-experienced in class action and consumer litigation. Before reaching this Settlement, Class Counsel engaged in litigation for over two years, reviewed extensive discovery, considered expert reports submitted by both sides, took numerous depositions, and exchanged mediation briefs. The Parties had ample opportunity to evaluate the respective strengths and weaknesses of the action. The settlement negotiations were at arms'-length and included two mediation sessions months apart that were overseen by a respected and experienced mediator. The use of a mediator supports that "the parties reached the settlement in a procedurally sound manner and that it was not the result of collusion or bad faith by the parties or counsel." *Sciortino v. PepsiCo, Inc.*, No. 14-CV-00478-EMC, 2016 WL 3519179, at *4 (N.D. Cal. June 28, 2016) (citing *Satchell v. Fed. Exp. Corp.*, No. C 03-2659 SI, 2007 WL 1114010, at *4 (N.D. Cal. Apr. 13, 2007) ("The assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive").

2. The Settlement Has "No Obvious Deficiencies"

The proposed settlement has no obvious deficiencies. It provides monetary relief and not coupons. The claims process is simple, easy to do, and encourages claims. The Notice program is reasonable. The monetary relief is adequate based on the hurdles that would be faced if litigation were to continue and Plaintiffs would have to obtain class certification and establish liability and damages on a class-wide basis. *See* e.g., ADT's Response In Opp. to Plaintiff's Motion for Class Certification (ECF Doc. 85 ["ADT Opp."], arguing that plaintiffs cannot establish liability on a class-wide basis because different customers were subject to different disclosures, there is no class-wide proof that the alleged omissions were material or relied upon by the class, and that plaintiffs cannot establish damages on a class-wide basis); *see also* ECF Doc. 85-29 (ADT's Exhibit 24) (contending that ADT made numerous disclosures concerning its wireless security systems). The absence of any obvious deficiencies weighs in favor of preliminary approval of the Settlement. *Lilly v. Jamba Juice Co.*, No. 13-CV-02998-JST, 2015 WL 1248027, at *7 (N.D. Cal. Mar. 18, 2015).

3. The Proposed Relief Does Not Grant Preferential Treatment to Class Representatives or Segments of the Class

Class Representatives do not receive any unduly preferential treatment under the Settlement. With the exception of Service Awards for their time and effort devoted to prosecuting the claims on behalf of the Class, Class Representatives are treated the same as every other member of the Settlement Class. "[T]he Ninth Circuit has recognized that service awards to named plaintiffs in a class action are permissible and do not render a settlement unfair or unreasonable." (*Nen Thio v. Genji, LLC*, 14 F.Supp.3d 1324, 1335 (N.D. Cal. 2014) citing *Harris*, 2011 WL 1627973, at *9 (citing *Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir.2003)).[4]

Nor does the use of two separate categories in the allocation plan result in unwarranted preferential treatment to one segment of the Settlement Class. The categories are based on the time period in which Settlement Class Members executed their contracts, and are directly linked to the comparative strength of the claims. The crux of this litigation is that ADT allegedly misrepresented or omitted information about security flaws in its residential wireless security systems, which flaws were independently identified by Logan Lamb in July 2014. ADT has denied knowledge of those vulnerabilities prior to that time. *See, e.g.*, ADT Opp. at 17:9-10. During their depositions, several ADT employees testified that they were not aware of the hacking techniques identified by Lamb prior to July 2014. *Id.* at 6:16-21. Thus, the claims of Settlement Class Members who initially contracted with ADT *before* ADT learned of Lamb's findings are significantly weaker than the claims of Settlement Class Members in the "post-Lamb" category, justifying the distinction in the plan of allocation. Zimmerman Decl. ¶ 24; *see Custom LED, LLC v. eBay, Inc.*, No. 12-CV-00350-JST, 2013 WL 6114379, at *8 (N.D. Cal. Nov. 20, 2013) (finding parties justifiably bifurcated class members' claims into two different time periods because the claims in period 1 were "significantly weaker" than the claims in period 2, and granting preliminary approval of a class action settlement).

4. Strength of Settlement Class Members' Claims Compared to the Amount Offered by the Settlement

ADT denies any wrongdoing, fault, liability or damage to Plaintiffs and members of the Settlement Class, denies that it committed any violation of law or breach of duty, denies that it acted improperly in any way, and contends that the Actions have no merit. (SA I.J (Recitals), p. 4). ADT has also argued that certification of a class is improper, and that it will be impossible for Plaintiffs to prove damages. *See, e.g.,* ADT Opp., *supra*.

Plaintiffs believe their claims have merit. Plaintiffs recognize, however, the inherent risks

[4] Although service awards in the amount of $5,000 are routine, Plaintiffs' Counsel feels that – for reasons that will be explained in the future motion for Court approval – the contribution of some of the named plaintiffs in this case has far exceeded that of the typical class representative. Accordingly, the Settlement Agreement authorizes Class Counsel to request an enhanced Service Award for certain deserving Plaintiffs of up to $10,000. (SA X, pp. 15-16). The Plaintiffs' support for the settlement is *not* conditioned upon Court approval of the Service Awards. (*Id.* p.16).

of litigating their claims through class certification, summary judgment, trial, and potential appeals, and of achieving a result better than that offered by the Settlement here. The Settlement, in contrast, provides certainty of recovery. There is a very real risk that the Settlement Class could obtain no better outcome against ADT through continued litigation, trial, and appeal.

The Settlement provides monetary relief for the alleged economic loss attributable to ADT's alleged omissions to all Settlement Class Members. Plaintiffs' ability to establish a premium price paid by Settlement Class Members for the wireless systems on a class-wide basis is hotly contested. In support of class certification, Plaintiffs argued that a consumer class may recover under an out-of-pocket theory where a seller's misrepresentation allowed it "to command a price premium and to overcharge customers systematically." *Carriuolo v General Motors Co.*, 823 F.3d 977, 987 (11th Cir. 2016). ADT made several arguments against that theory. *See, e.g.*, ADT Opp. at 22-25. For example, ADT argued that its residential wireless alarm systems do provide a measure of security, that Lamb's "publicized experiments have inspired no hacking attacks in the real world," that in 2014 no major manufacturer made residential systems that used encryption for wireless sensors (*i.e.*, there was no "encrypted" alternative product), and that courts have rejected a "subjective consumer valuation" of an alleged premium price paid. *Id.* at 4-5, 23.

In addition to providing the agreed monetary compensation, the Actions have caused ADT to change its practices. ADT has revised its disclosures on its website, in its contracts, and in SEC filings, to specifically disclose the risk of hacking of wireless communications to and from peripheral sensors. *See, e.g.*, ECF Doc. 85-29, Exh. 24 to ADT Opp. Additionally, ADT has asked alarm system manufacturers to address the vulnerabilities identified by Lamb. *See* ADT Opp. at 8-9 ("Although the Lamb hacks 'would be difficult to implement,' ADT decided to 'make it a requirement to use encryption' in residential systems going forward. [] ADT thus asked manufacturers to create a residential system with sensors that use encryption and spread spectrum []."). These are additional benefits provided by the Actions that also weigh in favor of approving the Settlement. *See Smith v. Am. Greetings Corp.*, No. 14-CV-02577-JST, 2015 WL 4498571, at *8 (N.D. Cal. July 23, 2015) (finding that defendant's changing some of the practices the plaintiffs challenged in the litigation counted as additional benefits to the total "recovery" beyond the payment of past monetary damages, and granting preliminary approval to the settlement).

Finally, the Settlement is advantageous to the Settlement Class Members because the Released Claims do not include any claims for personal injuries, or damage to or loss of property. (SA IV, p. 8). Thus, Settlement Class Members can claim the benefits of the Settlement and still pursue any other claims they may have against ADT resulting from, *e.g.*, a residential burglary (subject to any defenses ADT may assert). A comparison of, *inter alia*, the strength of Plaintiffs' claims with the relief offered by the Settlement supports preliminary approval of the Settlement.

5. The Complexity, Time, and Expense of Continued Litigation

Prosecuting Plaintiffs' claims through trial and appeal would be lengthy and complex, and impose significant costs on the Parties. *See, e.g.*, *In re Austrian and German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 174 (S.D.N.Y. 2000). Continued proceedings would likely include substantial motion practice (including completion of class certification briefing and any summary judgment motions), determination of class certification, trial, and appeal. Continued proceedings would be time consuming and complex given the large volume of documents (over 45,000 pages) and deposition testimony (including testimony of most of the Class Representatives and a total of seventeen fact witnesses), and the detailed expert declarations regarding liability and damages that have been exchanged.

The Settlement, in contrast, delivers a real and substantial remedy to the Settlement Class without further the risk or delay. This factor favors preliminary approval of the Settlement. *See Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d Cir. 1982); *In re Sunrise Sec. Litig.*, 131 F.R.D. 450, 455 (E.D. Pa. 1990) (approving a class action settlement because, in part, the settlement "will alleviate . . . the extraordinary complexity, expense and likely duration of this litigation").

6. The Views of Experienced Counsel

Courts consider the opinions of experienced counsel when determining whether a settlement is fair, reasonable, and adequate. *Hanlon*, 150 F.3d at 1026. Class Counsel here have extensive experience litigating complex class actions. They have achieved class action settlements that have been approved by many courts across the country and recovered substantial monetary benefits for Class Members. *See* Zimmerman Decl. ¶¶ 3-7, 21 and Resumes of Zimmerman Law Offices, P.C., Chavez & Gertler LLP, Bonnett, Fairbourn, Friedman & Balint, P.C., Saxena White P.A., and Law Offices of William C. Wright, P.A., attached thereto as Exhibits 2-6.

The Settlement Class Members were well-represented by experienced and fully prepared counsel at the bargaining table. Class Counsel believe the Settlement to be excellent, readily satisfying the standard of being within the range of possible approval.

7. The Stage of Proceedings and the Amount of Discovery Completed

Class Counsel reviewed and analyzed a rolling production of over 45,000 pages of documents and class data produced by Defendants (including the production by ADT during the negotiations and mediation of updated spreadsheets containing information concerning the size and scope of class), took or participated in the depositions of seventeen fact witnesses, defended depositions of most of the Class Representatives, consulted with experts and industry personnel regarding the alleged security flaws, obtained expert reports in support of class certification, assessed the alleged security flaws, and assessed ADT's expert witness reports. (SA I.G; Zimmerman Decl. ¶¶ 16-20).

The pertinent question is whether Class Counsel have sufficient information to ensure "effective representation." *In re AT&T Mobility Wireless Data Servs. Sales Tax Litig.*, 789 F. Supp.2d 935, 966 (N.D. Ill. 2011). Courts have repeatedly explained that it does not matter whether the discovery is labelled "formal" or "informal;" instead "the pertinent inquiry is what facts and information have been provided." *Id.*; *see also McBean v. City of New York*, 233 F.R.D. 377, 384-85 (S.D.N.Y. 2006); *In re Elan Secs. Litig.*, 385 F.Supp.2d 363, 370 (S.D.N.Y. 2005). Here, Class Counsel were well-informed of the important facts and relevant legal issues when negotiating this Settlement. This factor favors preliminary approval of the Settlement.

B. The Settlement Class Should Be Certified

Courts favor the use of settlement classes "to foster negotiated conclusions to class actions." *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995). A settlement class in complex litigation "actually enhances absent class members' opt-out rights because the right to exclusion is provided simultaneously with the opportunity to accept or reject the terms of a proposed settlement." *In re Prudential Sec. Ltd. P'ship Litig.*, 163 F.R.D. 200, 205 (S.D.N.Y. 1995). When granting preliminary approval of a class action settlement, it is appropriate for a court to certify a class for settlement purposes. *See Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

The Parties have agreed to certification of the following Settlement Class for settlement purposes only:

> All current and former ADT customers who between November 13, 2009 and August 15, 2016 entered into a contract with ADT or an ADT dealer for installation of a residential security system, or who had ADT or an ADT dealer install a residential security system, that includes at least one wireless peripheral sensor.

SA II, p. 7.[5] Settlement Class Members who exclude themselves or "opt-out" of the Settlement, pursuant to the procedures set forth in SA XI.A (pp. 16-17), will no longer thereafter be Settlement Class Members, will not be bound by the Settlement, and will not be eligible to make a claim for any benefit provided by the Settlement.

1. The Requirements of Fed. R. Civ. P. 23(a) Are Satisfied

Rule 23(a) sets forth the following prerequisites for certifying a class: "(1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a). Each of these requirements is satisfied here.

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a. The Settlement Class Is So Numerous that Joinder of Individual Members Is Impracticable

Fed. R. Civ. P. 23(a)(1) requires a showing that "the class is so numerous that individual joinder of all members is impracticable." Although the precise number of Settlement Class

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[5] Excluded from the proposed class are current and former ADT residential customers whose accounts were assumed, purchased or otherwise acquired by ADT from any third-party other than ADT dealers, including but not limited to any other alarm company, as well as: (1) current and former employees, officers and directors of ADT and its agents, subsidiaries, parents, successors, predecessors, and any entity in which they or their parents have a controlling interest; (2) the judge to whom this case is assigned and the judge's immediate family; (3) any person who executes and files a timely request for exclusion from the Class; (4) any persons who have had their claims in this matter finally adjudicated and/or otherwise released; and (5) the legal representatives, successors and assigns of any such excluded person. (SA p. 7).

Members is unknown due to lack of information about the components of some customers' systems,[6] ADT's records indicate there are some 6.4 million *potential* Settlement Class Members. (Zimmerman Decl. ¶ 27) – a number more than sufficient to establish that joinder would be impracticable. *See, e.g., Staton v. Boeing Co.*, 327 F.3d 938, 953 (9th Cir.2003) (class of 15,000 met numerosity requirement); *Consol. Rail Corp. v. Town of Hyde Park*, 47 F.3d 473, 483 (2d Cir. 1995) (numerosity presumed where class consists of forty or more members); *Newberg, supra*, § 24.18.

b. There Are Questions of Law and Fact Common to the Settlement Class

Rule 23(a)(2) requires the existence of a question of law or fact that is common to all Settlement Class Members and capable of class-wide resolution, the determination of which is central to the validity of all Class Members' claims. *Wal-Mart Stores, Inc. v. Dukes*, 546 U.S. 349-50, 131 S.Ct. 2541, 2551 (2011). "All questions of fact and law need not be common to satisfy the Rule. The existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies 'within the class.'" *In re ConAgra Foods, Inc.*, 90 F.Supp.3d 919, 972 (C.D. Cal. 2015), *aff'd sub nom. Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121 (9th Cir. 2017), and *aff'd sub nom. Briseno v. ConAgra Foods, Inc.*, No. 15-55727, 2017 WL 53421 (9th Cir. Jan. 3, 2017) (quoting *Hanlon*, 150 F.3d at 1019).

Several questions of law and fact common to all Settlement Class Members exist, including, but not limited to, the following:

a. whether ADT's wireless residential security systems are unencrypted or otherwise vulnerable to attack by unauthorized third parties;

b. whether ADT's omissions constitute the concealment, suppression, or omission of a material fact likely to mislead a consumer acting reasonably under the circumstances, to the consumer's detriment under the Florida Deceptive Unfair Trade Practices Act ("FDUTPA");[7]

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[6] The proposed Claim Form will allow Settlement Class Members to check a box to certify to the best of their knowledge, information, and belief that their residential security system included at least one wireless sensor. (SA Exh. C). Notice will be provided to millions of *potential* Settlement Class Members. (SA VII.A, Class List, pp.10-11; *see also* Part IV-C below, Notice).

[7] Plaintiffs allege that ADT's misrepresentations and omissions emanated from Florida, where its headquarters are located. (FAC ¶¶ 65-66). All of the decision-making regarding the advertisements for the wireless residential security systems allegedly occurred in Florida, including ADT's decision to allegedly conceal from customers that the systems are not encrypted and not protected

c. whether ADT's omissions regarding its wireless systems constitute an unfair and/or deceptive practice under the FDUTPA; and

d. whether Plaintiffs and members of the Settlement Class were damaged as a result of ADT's alleged conduct and in what amount.

Accordingly, the commonality requirement is easily met.

c. Plaintiffs' Claims Are Typical of the Claims of the Settlement Class

Typicality is satisfied when "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). A plaintiff's claim "is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members and his or her claims are based on the same legal theory." *Hunt v. Check Recovery Sys., Inc.*, 241 F.R.D. 505, 511 (N.D. Cal. 2007) (quot. marks and citations omitted). To be found typical, a plaintiff must show that other class members have been similarly injured by the same course of conduct that is not unique to the named plaintiff. *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 984 (9th Cir. 2011). However, representative claims "need not be substantially identical;" they are "typical" so long as they are "reasonably co-extensive with those of absent class members." *Hanlon*, 150 F.3d at 1020. Typicality is, thus, generally satisfied if the named plaintiff is a part of the class and has suffered the same injury as other class members. *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 156 (1982).

The representative Plaintiffs are part of the Settlement Class they seek to represent because they are victims of ADT's alleged uniform failure to disclose the risks associated with the wireless home security systems that ADT sold to them and other Settlement Class Members. Class

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from being electronically jammed or disabled. Further, it is alleged that ADT's decisions and actions to prevent Logan Lamb from publically revealing the security flaw occurred in Florida. This conduct was identical for every member of the Settlement Class.

The Florida courts have repeatedly held that FDUTPA is not limited to Florida residents. *See, e.g.*, *Millennium Commc'n & Fulfillment, Inc. v. Office of the Atty. Gen.*, 761 So.2d 1256, 1262 (Fla. Dist. Ct. App. 2000; *Barnext Offshore, Ltd. v. Ferretti Group USA, Inc.*, 10-23869-CIV, 2012 WL 1570057, at *6 (S.D. Fla. 2012). Those courts held that "there are no geographical or residential restrictions" in FDUTPA. *Millennium Commc'n.*, 761 So.2d at 1262. In fact, the FDUTPA expressly provides that it applies to "any trade or commerce. . . wherever situated." *Barnext Offshore* at *5 (citing Fla. Stat. § 501.202; *id.* at § 501.203). Where, as here, the conduct complained of occurs in Florida, "persons affected by the conduct residing outside of the state may take corrective measures under the FDUTPA." *Id.* at *6.

Representatives' claims are typical of those of Settlement Class Members because they are based on the same theories of liability and will be proved by the same common evidence. Because Class Representatives were harmed by the same omissions and in the same way as Settlement Class Members, their claims are typical of the Settlement Class. *See Asghari v. Volkswagen Grp. of Am., Inc.*, No. CV1302529MMMVBKX, 2015 WL 12732462, at *13 (C.D. Cal. May 29, 2015) (finding typicality where the named plaintiffs were each current or former owners of class vehicles who allege that they were injured by an oil consumption defect and by defendants' purported misrepresentations and omissions regarding the same).

d. The Interests of Class Representatives and Class Counsel Are Aligned with the Interests of the Settlement Class

The adequacy requirement is satisfied if the class representative will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a)(4). This requires that the Class Representatives have no conflict of interest with the proposed Settlement Class and be represented by competent counsel. *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 462 (9th Cir. 2000); *Hanlon*, 150 F.3d at 1020; *Ellis*, 657 F.3d at 985 (adequacy depends on "an absence of antagonism between representatives and absentees, and a sharing of interest between representatives and absentees"); *In re Rubber Chem. Antitrust Litig.*, 232 F.R.D. 346, 351 (N.D. Cal. 2005). When class representatives and members seek the common goal of the largest possible recovery for the class, their interests do not conflict. *In re Corrugated Container Antitrust Litig.*, 643 F.2d 195, 208 (5th Cir. 1981).

No conflicts exist here. Class Representatives are each members of the Settlement Class, and each has suffered the same or similar injuries as the rest of the Settlement Class. Class Representatives have demonstrated that they are well-suited to represent the Settlement Class. Class Representatives came forward and served as named plaintiffs in the Actions, assisted in the prosecution of the Actions, including (for most of them) sitting for their depositions, considered whether to accept the Settlement, and otherwise served as Class Representatives. (Zimmerman Decl. ¶ 26.) Class Representatives' interests are aligned with those of the other Settlement Class Members in that they sought the largest possible recovery for the Settlement Class given the relevant facts and applicable law. Under the terms of this Settlement, ADT must pay $16 million with no reverter and every Settlement Class Member can receive a monetary payment.

2. The Requirements of Rule 23(b)(3) Are Satisfied

Rule 23(b)(3) requires that "questions of law or fact common to the members of the class predominate over any questions affecting only individual members of the class, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy." Fed. R. Civ. P. 23(b)(3). These requirements were added "to cover cases 'in which a class action would achieve economies of time, effort, and expense, and promote . . . uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results.'" *Amchem Products*, 521 U.S. at 615 (quoting Fed. R. Civ. P. 23(b)(3) Adv. Comm. Notes to 1966 Amendment).

Both of these requirements are satisfied here.

a. Common Questions Predominate Over Potential Individual Questions

"Commonality exists where class members' situations share a common issue of law or fact, and are sufficiently parallel to insure a vigorous and full presentation of all claims for relief." *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1172 (9th Cir. 2010). "[E]ven a single common question will do." *Wal-Mart Stores*, 546 U.S. at 359. "What matters to class certification ... is not the raising of common 'questions' – even in droves – but rather the capacity of a class-wide proceeding to generate common *answers* apt to drive the resolution of the litigation." *Id.*, 564 U.S. at 350 (emph. orig., cit. omitted); *see generally* Fed. R. Civ. P. 23, Adv. Comm. Notes, 1966 Am., Subdiv.(b)(3) ("fraud perpetrated on numerous persons by the use of similar misrepresentations may be an appealing situation for a class action").

As for predominance, "Rule 23(b)(3) asks whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *In re Wells Fargo Home Mortg. Overtime Pay Litig.*, 571 F.3d 953, 957 (9th Cir. 2009) (internal quot. marks and citation omitted). Common questions predominate whenever they "present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication." 7A Charles A. Wright, Arthur R. Miller & Mary Kay Kane, *Federal Prac. & Proc.: Civil* § 1778; *see also In re Bridgestone/ Firestone Inc. Tires Products Liability Litig.*, 205 F.R.D. 503, 520 (S.D. Ind. 2001).

Even where individualized factual determinations may be necessary, common questions predominate if those individualized determinations are nonetheless susceptible to generalized proof such as design documents and business records. *Newberg on Class Actions* § 4:50 (5th ed.) (common issues predominate when "individual factual determinations can be accomplished using computer records, clerical assistance, and objective criteria – thus rendering unnecessary an evidentiary hearing on each claim"); *see also Smilow v. Southwestern Bell Mobile Sys., Inc.*, 323 F.3d 32, 40 (1st Cir. 2003).

As set forth above in Part IV-B-1.b, it is clear that common questions exist here. Numerous cases have held that questions such as whether a manufacturer/seller had a duty to disclose information about problems with its products and whether the omitted facts are material are common questions that support class certification. A finding that ADT had a duty to disclose (or not), and that it violated the duty (or not), will provide a "common answer [] apt to drive the resolution of th[is] litigation." *Wal-Mart*, 564 U.S. at 350; *see also Baker v. Castle & Cooke Homes Hawaii, Inc.*, No. CIV. 11-00616 SOM, 2014 WL 1669158, at *5 (D. Haw. Apr. 28, 2014) (commonality requirement is satisfied where every claim depends on the resolution of the threshold question of whether a defect exists or not); *Helmer v. Goodyear Tire & Rubber Co.*, No. 12-CV-00685-RBJ-MEH, 2014 WL 1133299, at *5 (D. Colo. Mar. 21, 2014) ("asking a fact-finder to decide whether the product is indeed defective in the way that the plaintiffs allege would 'generate common answers apt to drive the resolution of the litigation.'").

Whether or not ADT had a duty to disclose is also a predominant common question. *Wolin*, 617 F.3d at 1173 ("Common issues predominate such as whether Land Rover was aware of the existence of the alleged defect, whether Land Rover had a duty to disclose its knowledge and whether it violated consumer protection laws when it failed to do so."); *Banks v. Nissan N. Am., Inc.*, 301 F.R.D. 327, 335 (N.D. Cal. 2013); *Chamberlan v. Ford Motor Co.*, 223 F.R.D. 524, 526-27 (N.D. Cal. 2004) (predominating common questions "include whether the design of the plastic intake manifold was defective, whether Ford was aware of the alleged design defects, whether Ford had a duty to disclose its knowledge, whether it failed to do so, [and whether the facts that Ford allegedly failed to disclose were material....").

Moreover, whether ADT's omissions and misrepresentations would deceive an objective reasonable consumer is a common issue for all the Class Members, amenable to classwide proof. *Fitzpatrick v. Gen. Mills, Inc.*, 635 F.3d 1279, 1282–83 (11th Cir. 2011); *see also Davis v. Powertel, Inc.*, 776 So.2d 971, 973 (Fla. 1st DCA 2000) ("A party asserting a deceptive trade practice claim need not show actual reliance on the representation or omission at issue."); *State, Office of Attorney Gen., Dep't of Legal Affairs v. Commerce Commercial Leasing, LLC*, 946 So.2d 1253, 1258 (Fla. 1st DCA 2007) (same). Further, it is alleged that common evidence will also establish that during the Class Period ADT made a deliberate decision to withhold disclosure of the security flaws inherent in its residential wireless systems, for fear that disclosure would adversely affect its sales and brand.

Here, the common questions of fact and law predominate over any potential questions affecting only individuals. The predominance requirement is satisfied.

b. A Class Action Is the Superior Method to Fairly and Efficiently Adjudicate this Matter

Rule 23(b)(3) requires a class action to be "superior to other available methods for the fair and efficient adjudication of the controversy," and sets forth the following factors:

> (A) the class members' interest in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action.

Fed. R. Civ. P. 23(b)(3). Where, as here, a court is deciding on the certification question in the context of a proposed settlement, questions regarding the manageability of the case for trial purposes do not have to be considered. *See Amchem*, 521 U.S. at 619.

A class action is the only reasonable method to fairly and efficiently adjudicate Settlement Class Members' claims against ADT. *See, e.g., Phillips Co. v. Shutts*, 472 U.S. 797, 809 (1985) ("[c]lass actions . . . permit the plaintiffs to pool claims which would be uneconomical to litigate individually . . . [in such a case,] most of the plaintiffs would have no realistic day in court if a class action were not available"); *Wolin*, 617 F.3d at 1175 (class certification proper where "recovery on an individual basis would be dwarfed by the cost of litigating on an individual basis"). On the facts here, the superiority requirement is satisfied.

3. Class Counsel Are Well-Qualified to Represent the Settlement Class

"An order certifying a class action . . . must also appoint class counsel under Rule 23(g)." Fed. R. Civ. P. 23(c)(1)(B). In appointing class counsel, courts should consider (i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action, (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class. Fed. R. Civ. P. 23(g)(1)(A).

Here, all proposed Class Counsel have worked diligently in identifying and investigating potential claims in the Actions. They have committed thousands of hours of legal services and incurred over $265,000 in costs in litigating this matter (including costs of mediation, depositions, retaining three different experts and obtaining surveys and expert reports, and expenses associated with depositions and in-person settlement negotiations). (Zimmerman Decl. ¶¶ 17-18.) Further, as noted, each Class Counsel has extensive experience managing class actions and other complex litigation, including the types of claims asserted in this action, and therefore has extensive knowledge of the applicable law. *See generally* Exh. 2-6 to Zimmerman Decl. Finally, Class Counsel have committed and will continue to commit whatever resources are necessary to represent the Settlement Class, just as they have done in the numerous class actions they have litigated and financed in the past. (Zimmerman Decl. ¶ 19.)

C. The Notice Program Satisfies All Applicable Requirements

Notice serves to "afford members of the class due process which, in the context of the Rule 23(b)(3) class action, guarantees them the opportunity to be excluded from the class action and not be bound by any subsequent judgment." *Peters v. Nat'l R.R. Passenger Corp.*, 966 F.2d 1483, 1486 (D.C. Cir. 1992) (citing *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173–74 (1974)). The Court must "direct notice in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1). And, notice must fairly describe the litigation and the proposed settlement and its legal significance. *See, e.g., Twigg v. Sears, Roebuck & Co.*, 153 F.3d 1222, 1227 (11th Cir. 1998)) ("[The notice] must also contain an adequate description of the proceedings written in objective, neutral terms, that, insofar as possible, may be understood by the average absentee class member[.]”). The proposed Notice Plan satisfies those requirements.

1. Appointment of a Settlement Administrator

The Parties agreed to the appointment of a Settlement Administrator chosen by Class Counsel, subject to approval of the Court and any objection by ADT. (SA, p. 7). Plaintiffs have selected Dahl Administration to be the Settlement Administrator. ADT has no objection to this selection. Dahl Administration has significant experience as a class action notice provider and claims administrator. *See* Zimmerman Decl. ¶ 28 and Exh. 1 thereto.

2. Method of Notice

There are approximately 6.4 million *potential* Settlement Class Members in two distinct groups: (1) those customers for whom there are indications that their security system included wireless sensors (“Probables”), and (2) those customers for whom there are no indications whether they are Settlement Class Members (“Possibles”). The proposed Notice program provides for direct notice to the approximately 2.7 million Probables through a mailed Postcard Notice (SA Exh. B-5) *as well as* email (SA Exh. B-3), to the extent email addresses are available. (SA VII.B.1, 2, pp.11-12). If any postcards are returned by the Post Office, the Settlement Administrator will either forward the Postcard Notice to the forwarding address provided, or use reasonable efforts to identify an updated address and then mail the Postcard Notice to that address. *Id.* The approximately 3.7 million Possibles will be provided notice through emails, to the extent email addresses are available, publication, the Settlement Website, and a Tweet (SA Exh. B-4) from ADT. (SA VII.B.2, VII.C-E, pp. 11-12). A Summary Notice (SA Exh. B-1) will be published in *USA Today* and banner ads will be run on the Internet. ADT will also post the Summary Notice in a conspicuous location on its company website with a link to the Settlement Website (SA VII.D, p. 12), and will also release a Tweet (SA Exh. B-4) that will mention the Settlement and notify the public that they can go to the Settlement Website for more information. (*Id*). The Notice program is explained in greater detail in the Declaration of Dahl Administration representative Mark A. Fellows In Support of Settlement Notice Plan filed herewith.

ADT has advised that it has email addresses for about 1/3 of all *potential* Settlement Class

Members. The Settlement Administrator will electronically transmit the Email Notice (SA Exh. B-3) to all potential Settlement Class Members for whom ADT provides an email address, with links to the Detailed Notice (SA Exh. B-2) and Claim Form (SA Exh. C) If emails are reported undelivered, the Settlement Administrator will update the email addresses through reasonable tracking procedures including an Email Change of Address service ("ECOA") and then send the Email Notice to that updated address. (SA VII, pp.10-12).

The Settlement Administrator will also establish a dedicated settlement website and maintain and update the website throughout the relevant time period. (SA VII.E, p. 12). The Settlement Website has an easy to remember domain name: www.ADTHomeSecuritySettlement.com. The Settlement Website will include links to the Detailed Notice, relevant case documents, a downloadable Claim Form, a fillable copy of the Claim Form that can be submitted electronically, and such other documents and information as may be agreed on by the Parties or ordered by the Court. (*Id.*). The Settlement Website will include the Settlement Administrator's toll-free telephone number for Settlement Class Members to call for information. (*Id.*).

3. Contents of the Notice Program

The Notice documents are designed to provide information about the Settlement, along with clear, concise, easily understood information about Settlement Class Members' legal rights. The Notice documents collectively include a fair summary of the Parties' respective litigation positions; the general terms of the Settlement; instructions for how to opt-out of or object to the Settlement; the Settlement website address; the process and instructions for making a claim; and, as to be set by the Court, the date, time and place of the Final Fairness Hearing.

The Notice documents contain information that a reasonable person would consider material in making an informed, intelligent decision of whether to opt out or remain a member of the Settlement Class and be bound by a final judgment, and they inform individuals how they can readily obtain more detailed information. For example, the Email Notice and Postcard Notice both inform Settlement Class Members that they can get more information by looking at the Settlement website, which will have links to certain documents, or by calling the toll-free number.

Additionally, Settlement Class Members can call or email Lead Class Counsel, or access Court documents through PACER. (*See* SA Exh. B-2). Altogether, the Notice documents fairly apprise the Settlement Class Members of the terms of the Settlement and the options that are open to them in connection with this litigation.

The Notice documents and the Notice Program are the best notice practicable under the circumstances, constitute due and sufficient notice to the Settlement Class, and comply with Fed. R. Civ. P. 23 and due process requirements.

V. CONCLUSION

For all of the reasons discussed above, this unopposed Motion for Preliminary Approval should be granted, and the Court should enter the Proposed Order submitted herewith.

Dated: March 23, 2017

CHAVEZ & GERTLER LLP

BONNETT, FAIRBOURN, FRIEDMAN & BALINT P.C.

ZIMMERMAN LAW OFFICES, P.C.

By: *_/s/ Mark A. Chavez_*
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